

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 81707 [PW040003-US]			
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>January 5, 2010</u> Signature <u>/Richard E. Wawrzyniak/</u> Typed or printed name <u>Richard E. Wawrzyniak</u>	Application Number 10/804,790		Filed March 19, 2004		
	First Named Inventor Masaaki Oka				
	Art Unit 2195		Examiner TRUONG, CAMQUY		
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%; border: none;"><tr><td style="width: 50%; vertical-align: top; padding: 5px;"><input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>36,048</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td style="width: 50%; vertical-align: top; padding: 5px;"><u>/Richard E. Wawrzyniak/</u> Signature <u>Richard E. Wawrzyniak</u> Typed or printed name <u>(858) 552-1311</u> Telephone number <u>January 5, 2010</u> Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>				<input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>36,048</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	<u>/Richard E. Wawrzyniak/</u> Signature <u>Richard E. Wawrzyniak</u> Typed or printed name <u>(858) 552-1311</u> Telephone number <u>January 5, 2010</u> Date
<input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>36,048</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	<u>/Richard E. Wawrzyniak/</u> Signature <u>Richard E. Wawrzyniak</u> Typed or printed name <u>(858) 552-1311</u> Telephone number <u>January 5, 2010</u> Date				
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No.: 10/804,790

Applicant: Masaaki Oka

Filed: March 19, 2004

Title: INFORMATION PROCESSING SYSTEM,
INFORMATION PROCESSING DEVICE,
DISTRIBUTED INFORMATION PROCESSING
METHOD AND COMPUTER PROGRAM

Examiner: TRUONG, CAMQUY

Art Unit: 2195

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<u>1/5/2010</u>	<u>/Richard E. Wawrzyniak/</u>
Date	Richard E. Wawrzyniak
	Registration No. 36,048
	Attorney for Applicant(s)

BRIEF IN SUPPORT OF PRE-APPEAL REQUEST FOR REVIEW

MAIL STOP AF

Hon. Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

In response to the Final Office Action mailed August 5, 2009, and the Advisory Action mailed December 8, 2009, please enter the following brief in support of the attached Pre-Appeal Request for Review. A Notice of Appeal is also submitted herewith.

Claims 1-8 and 16 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over U.S. Patent No. 6,484,204 (Rabinovich) in view of U.S. Patent No. 6,938,256 (Deng et al.). Applicants respectfully traverse this rejection. Claims 9-15 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over Rabinovich in view of Deng and further in view of U.S. Patent No. 6,009,455 (Doyle et al). Applicant respectfully traverses this rejection.

I. CLEAR ERROR: NO *PRIMA FACIE* CASE OF OBVIOUSNESS ESTABLISHED SINCE ALL LIMITATIONS OF INDEPENDENT CLAIMS 1, 11, 14 AND 15 ARE NOT DISCLOSED BY RABINOVICH IN VIEW OF DENG IN FURTHER VIEW OF DOYLE:

A. RABINOVICH DOES NOT DESCRIBE OR SUGGEST “LOAD MEASUREMENT MEANS FOR MEASURING AN ACTUAL MAGNITUDE OF A LOAD OF AN INFORMATION PROCESSING REQUESTED” AS RECITED:

Applicants’ claim 1 recites in part, “...load measurement means for measuring an actual magnitude of a load of an information processing requested” Independent Claims 11, 14 and 15 recite similar language.

In asserting that Rabinovich describes this limitation, in the previous office action mailed August 5, 2009, the Examiner cites to col. 6, line 67 – col. 7, line 20 of the reference (Office Action, pg. 5). As stated by the Examiner the cited portion discloses “determin[ing] the value of a request metric” wherein the request metric is “a historical measure of the request for the object that have been forwarded to the host that stores the replica of the requested object” (Office Action, pg. 5; Rabinovich, col. 6, line 67 – col. 7, line 5).

Applicant submits this portion of Rabinovich fails to describe or suggest “load measurement means for measuring an actual magnitude of a load of an information processing requested.” In fact, it is believed that Rabinovich does not measure any information regarding the request; instead, the request metric refers to a measurement of “requests for the object that have been forwarded to the host” (col. 7, line 4). This is further apparent by the example provided in Rabinovich station that the “request metric is the number of requests for an object assigned to a host by request distributor” (col. 7, lines 12-13). Therefore, the request metric referred to by the Examiner refers to a measurement regarding the host, equated with the available device, rather than the requested object, equated with the information processing requested (see Office Action, pg. 5).

Furthermore, in Rabinovich, “the request distributor selects a host ... to respond to the request based upon the request metric and the distance metric of the host in relation to the request metric and distance metrics of the other [hosts] that also store replicas of the requested object (col. 7, lines 43-48). Therefore, the only measurements made are with respect to the hosts, and no determination is made with respect to the requested object, equated with the information processing requested (see Office Action, pg. 5).

In the advisory action mailed December 8, 2009, the Examiner maintains his rejection of the claims, stating that “Rabinovich teaches load measurement means for measuring an actual magnitude of a load of an information processing requested (the distance metric measures, the cost of communication between the requester and the host that stores a replica of the requested object, col. 7, lines 35-42).” However, similar to the request metric, the distance metric of Rabinovich does not describe a load

measurement means for measuring the actual magnitude of the load as requested. Instead, the distance metric measures “the cost of communicating between the requester and the host” (see Rabinovich, col. 7, lines 34-37). The distance metric, similar to the request metric, is used to select one of a several hosts, “based upon the request metric and the distance metric of the host in relation to the request metric and the distance metrics of the other that also store replicas of the requested objects” (Rabinovich, col. 7, lines 43-47). Therefore, it is clear, that the distance metric measures a property of the host, i.e. cost of communicating between the requester and the host, and does not represent an “actual magnitude of the load of an information processing requested.”

Thus, Applicants respectfully submit that, Rabinovich does not describe or suggest load measurement means for measuring an actual magnitude of a load of an information processing requested.

B. RABINOVICH DOES NOT DESCRIBE OR SUGGEST “DETERMINATION MEANS FOR DETERMINING AT LEAST ONE AVAILABLE DEVICE BY COMPARING THE ACTUAL MAGNITUDE OF THE LOAD MEASURED BY THE LOAD MEASUREMENT MEANS AND THE METRIC INFORMATION STORED IN SAID METRIC INFORMATION MANAGEMENT MEANS:

Applicants’ claim 1 further recites in part:

... determination means for determining at least one available device by comparing the actual magnitude of the load measured by the load measurement means and the metric information stored in said metric information management means

Independent Claims 11, 14 and 15 recite similar language. Applicants previously stated, in response to the Office Action mailed August 5, 2009, that Rabinovich fails to describe or suggest this limitation. That is, the Applicants stated that The distance metric and the request metric are used to select one of a several hosts, “based upon the request metric and the distance metric of the host in relation to the request metric and the distance metrics of the other that also store replicas of the requested objects” (Rabinovich, col 7, lines 43-47).

Accordingly, as described above, and argued previously, the determination of the host in Rabinovich is based on comparing the request metric and the distance metric, which both refer to information regarding the host, “with request metric and distance metrics of the other [hosts] that also store replicas of the requested object” (col. 7, lines 43-47). Therefore, Rabinovich fails to describe or suggest comparing the actual magnitude of the load of an information processing requested, equated to the requested object, with the metric information of information processing devices, equated with the hosts.

In response to these arguments, presented in response to the Office Action mailed August 5,

2009, the Examiner states that “Rabinovich teaches load measurement means for measuring an actual magnitude of a load of an information processing requested (the distance metric measures the cost of communicating between the requester and the host that stores a replica of the requested object, col. 7, lines 35-42). However, as previously argued and stated above, the distance metric cannot be equated with the actual magnitude of the load of an information processing requested, and further, the determination of the host in Rabinovich is based on comparing the request metric and the distance metric, which both refer to information regarding the host, “with request metric and distance metrics of the other [hosts] that also store replicas of the requested object” (col. 7, lines 43-47).

Accordingly, for the reasons discussed above, Rabinovich fails to describe or suggest each limitation as recited in claim 1. Furthermore, Deng also fails to describe or suggest the limitations not disclosed by Rabinovich. Therefore, Applicant respectfully submits that the above-cited combination fails to render independent claim 1 obvious. Furthermore, Doyle also fails to describe or suggest this limitation. As such, the proposed combination fails to render independent claims 11, 14 and 15 obvious.

II. CLEAR ERROR: NO *PRIMA FACIE* CASE OF OBVIOUSNESS ESTABLISHED SINCE ALL LIMITATIONS OF DEPENDENT CLAIMS 2 AND 6 ARE NOT DISCLOSED BY RABINOVICH IN VIEW OF DENG:

Claim 2 recites in part:

first list management means for acquiring first metric information representative of static processing metric of said other information processing devices to determine at least one or more available devices, and storing a first list in a predetermined memory area, said first list being such that the one or more available devices determined are listed; and
second management means for measuring second metric information representative of dynamic processing metric of the one or more available devices listed in said first list

Applicant respectfully submits that Deng fails to describe or suggest a first list management means and a second list management means as recited in claim 2.

The Examiner submits that Rabinovich does not describe metric information management means and instead relies on Deng as disclosing this limitation (Office Action mailed August 5, 2009, pg. 5). However, as previously argued by Applicant in response to the previous Office Action mailed January 22, 2009, Deng also fails to describe or suggest a first list management means and a second list management means as recited. Specifically, in rejecting claim 2 the Examiner contends that Deng describes “collecting resource capability information of each server and ranks the available servers” (see Office Action mailed August 5, 2009, pg. 6 (citing Deng, col. 5, lines 38-40 and col. 6,

lines 34-40). The cited portion of Deng recites: “The VXT (100) ranks the available servers according to specific ranking criteria and servers' current running status in CPU availability, memory availability, storage connectivity, main proxy server connectivity, and peer server connectivity and generates a resource table (132) summarizing the resource capability metric (134) in a capability vector (136).” (Deng, col. 6, lines 34-40). As such, Deng only describes measuring the resource capability metric 134 for all available servers and storing the information into a capability vector 136 which is summarized in a resource table 132.

There is no discussion of a first list management means for measuring static capability information, equated with the metric information recited in claim 2, for the available servers, equated with the available devices in claim 2, and storing a list having one or more of the available servers, and a second list measurement means for measuring dynamic capability information for those devices in the first list, and further does not disclose a separate index list ranking the devices listed in the second list. Instead, Deng only describes a single list, i.e. resource table 132.

In response, in the Advisory Action, the Examiner once again states that Deng describes a first list management list, citing capability vector 136, and a second list management list citing a resource table 132. Applicants disagree with the Examiner and again point out that as shown in FIG. 1 of Deng and described in the corresponding description in the specification Deng only describes a single list, i.e. resource table 132, and the capability vectors are simply entries within this list.

As such, Deng fails to describe or suggest each limitation as recited in claim 2. Accordingly the proposed combination fails to render claim 2 obvious for these additional reasons. Claim 6 recites language similar to that of claim 2 with respect to a first list management means and a second list management means, and therefore, claim 6 is also not rendered obvious by the proposed combination of Rabinovich and Deng for the reasons discussed above with respect to claim 2.

III. CONCLUSION: Applicant respectfully submits that there is at least one clear error in the rejection of at least one claim; thus, Applicant requests that the application be allowed or that prosecution be re-opened.

Respectfully submitted,
FITCH, EVEN, TABIN & FLANNERY

Dated: January 5, 2010

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